IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9192 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK ROOPCHAND CHHATANI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged his detention order by way of this petition under Article 226 of the Constitution of India. The detention order came to be

passed against the petitioner by the Police Commissioner, Baroda City, Baroda on 1.8.2000 in exercise of the powers conferred upon him under section 3(1) of Gujarat Prevention of Anti social Act (PASA Act for short). The petitioner was detained in pursuance of this order ion 1.8.2000. The detaining authority took into consideration 2 crimes registered against the petitioner under Bombay Prohibition Act. The detaining authority also considered the statement of 3 witnesses who offered their statements on assurance of anonymity. The witnesses stated that the petitioner was dealing in illegal liquor and was a hardened criminal and was an obstruction to public order. Taking into consideration these statements and materials of investigation in the above said crimes, the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act and hence the impugned order.

#. Learned advocate Mr. A.S.Dave for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Amongst various grounds urged on behalf of the petitioner the ground for delay in passing the order was vehemently urged. It was urged that the petitioner was released on bail from 18.2.2000 in the crime registered against him under the Bombay Prohibition Act and the order came to be passed on 1.8.2000- almost after 6 months. Even taking into consideration the incidents narrated by the witnesses of 16.6.2000, 21.6.2000 and 27.5.2000 the order is stale and the delay is unexplained vitiating the order of detention.

#. There is some force in the contention urged on behalf of the petitioner. It clearly emerges that the petitioner was detained from 18.2.2000. Thereafter an attempt is made to cover the period by narrating the incidents of 27.5.2000, 12.6.2000 and 21.6.2000 to the statements of witnesses. The last incident detaining authority referred to is of 21.6.2000 and it is an unregistered crime as stated by the witness. However thereafter also, the order in question came to be passed on 1.8.2000. It clearly appears that there is want of proximity between the passing of the order of detention and the last incident. Even if it is taken as 21.6.2000, there is no live link between the passing of the order and the incident narrated. This delay of about 1-1/2 months is unexplained by the detaining authority. In similar circumstances this Court, in the case of Elesh Nandubhai Patel vs. Comissioner of Police Ahmedabad City

& ors as reported in 1997 (1) GLH 381 after relying upon the decision of the Apex Court in the case of Pradeep Nilkanth Paturkar vs. Vs. Ramamurthi & ors as reported in 1994 SC 656 ruled that there was no live link between the order passed in the so called incident and the order in question therefore was quashed by this Court. Similarly in this case also there is unexplained delay in passing of the order of detention and therefore, the further detention of the detenu is vitiated on this ground alone and the order of detention is required to be set aside.

#. In view of the above discussion the order of detention passed by the Commissioner of Police, Baroda City, Baroda on 1.8.2000 against the petitioner under the PASA Act is hereby quashed and set aside. The petitioner-Ashok Roopchand Chhatani is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct Service permitted.

(J.R.Vora.J)

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